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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.4407 OF 2024

**ATUL
GANESH
KULKARNI**

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Satish Ramchandra Kaikadi ... Petitioner

V/s.

Maharashtra State Road Transport
Corporation, through Divisional
Traffic Superintendent, Sangli Div. ... Respondent

Ms. Neelam Yadav i/by Mr. Kiran Bhadane for the
petitioner.

Mr. P.G. Sawant, AGP for the respondent/State.

CORAM : AMIT BORKAR, J.

DATED : MARCH 28, 2024

P.C.:

1. The petitioner is challenging orders passed by the Labour Court confirmed by the Industrial Court rejecting application for temporary relief during pendency of the complaint.

2. Facts giving rise to the present writ petition are as under. The petitioner was working as conductor with respondent/Corporation since 2002. On 31 July 2018 on the route from Jath to Chembur, the bus reached Chembur on 1 August 2018 at 6.00 a.m. The complainant was having returning duty on the said bus at about 5.00 p.m. However, the petitioner was not found on duty. Hence, the driver reported the fact to the Traffic Superintendent, Chembur

and Jath and consequently the bus was cancelled. When the Traffic Superintendent checked rest room along with police at about 11.00 p.m., the petitioner was found under influence of liquor. Hence, he was sent to the police station, Kurla. On his examination he was found to be in drunken condition and, therefore, another conductor was provided and the bus was re-routed on 2 August 2018. On return of bus at Jath, on the scrutiny it was found that the sold tickets were to the tune of Rs.22,223/-. However, the petitioner deposited Rs.2,050/- in the depot. Therefore, according to the respondent, the petitioner misappropriated the balance amount of Rs.20,173/-. The Depot Manager, therefore, lodged first information report on 3 August 2018. The petitioner along with his wife entered the cabin of Depot Manager and tried to commit suicide by taking poison. According to the respondent, therefore, the petitioner committed misconduct under clauses 10, 11, 12b, 22 and 32 of Schedule-A of the Discipline and Appeal Procedure.

3. The petitioner submitted his reply to the charge-sheet and requested for personal hearing. The Divisional Traffic Superintendent conducted inquiry and recorded a finding that the charges levelled against the petitioner are proved. He, therefore, issued show-cause notice of dismissal of the petitioner on 14 November 2018. The petitioner, therefore, challenged the show-cause notice by filing Complaint (ULP) No.54 of 2018. The petitioner filed an application for interim relief. The Labour Court by order dated 28 September 2022 rejected the application for temporary relief. The Industrial Court confirmed the order. Hence, the petitioner has filed present writ petition.

4. Learned advocate for the petitioner submitted that there was no material available with the respondent to record a finding of misconduct. The relevant procedure for holding inquiry was not followed. The person who issued charge-sheet had no authority. The Inquiry Officer acted as prosecutor since he conducted cross-examination of the witnesses.

5. The Courts below recorded findings based on material on record that the findings of misconduct was based on initial report of the Depot Manager submitted on 23 August 2018. The report gave details of the misconduct of not joining the duty and consuming liquor while on duty. The charge of misappropriation of amount of Rs.20,173/- has been proved by producing relevant material before the Inquiry Officer. The material in the form of panchanama indicates that sale of ticket was of Rs.22,223/-; however, cash box in possession of the petitioner found cash of Rs.2,050/-. Based on positive report of blood examination, complaint under Section 112-A and 117 of the Mumbai Police Act, 1951 was filed. Therefore, prima facie material in support of issuance of charge-sheet was produced before the Courts below.

6. On perusal of the material, it appears that the Inquiry Officer asked questions and did not conduct cross-examination. It is open for the Inquiry Officer to ask questions to the witnesses. Therefore, it cannot be said that the Inquiry Officer was Judge of his own cause. The Courts below have recorded findings that there are thirty misconduct to the discredit of the petitioner since 2003.

7. On overall consideration of the material on record, the Courts below refused to grant interim relief. In my opinion, the orders do not suffer from legal infirmity.

8. The writ petition stands dismissed. No costs.

(AMIT BORKAR, J.)